

FISCAL IMPLICATIONS

The ADA states that the DAs' Offices would experience an increase in hearings by the court, thus requiring additional preparation by District Attorney staff to determine imposition, suspension, or deferral of incarceration of habitual offenders. In addition, there would likely be an increase in the Adult Probation caseload, due to mandatory time not being imposed. This would result in the need for additional DA personnel, additional judges due to increases in courtroom hearings, and additional probation officers.

The PDD explains that under existing law, the accused has no reason to enter into a "plea" with the state if he is facing mandatory "habitual time" that the judge has no authority to suspend. Pleas are the most cost effective method of administering justice, but the current law drives cases to trial. A plea saves the court time and the taxpayer the expense of costly trials. This legislation obviously contemplates a plea and a subsequent sentencing where the accused hopes to convince the judge that habitual time be suspended or deferred. The burden upon this department to produce credible evidence on behalf of clients increases. Such mitigation evidence includes expert testimony as well as investigative and social worker reports, but the costs are shifted from trial into a sentencing hearing.

The AOC believes SB 295 will likely have a positive fiscal impact on the courts because the courts will have more discretion in sentencing defendants and perhaps there will be more plea agreements and fewer trials and visits to the court. This bill could also result in a decrease of prison costs if judges exercise their discretion and not sentence defendants to additional prison terms.

ADMINISTRATIVE IMPLICATIONS

The ADA claims the DAs' offices would need additional support, but the ADA has not quantified the exact number of FTEs needed nor what additional support will be required.

DUPLICATION

Duplicates HB 26, Sentencing of Habitual Offenders

OTHER SUBSTANTIVE ISSUES

The ADA has offered the following:

- Career criminals commit 70% of the crime in New Mexico. Elimination of mandatory time will decrease the quality of life in communities where career criminals operate.
- The deterrent effect of mandatory time will be significantly reduced for career criminals.
- Crime is likely to increase in New Mexico if repeat offenders avoid mandatory time.

The PDD disagrees with the prosecutors and believe that rational judicial discretion exercised in a public courtroom will result in violent offenders going to prison. Defense advocates do not believe that judges will be inappropriate in their application of discretion. Prosecutors also fear the loss of total control over sentencing, but there are instances of irrational prosecutorial use of habitual penalties.

POSSIBLE QUESTIONS

1. Has consideration been given to limit SB 295 to non-violent felonies only?
2. Has consideration been given to limit the application of SB 295 to fourth degree felony drug convictions?

DW/njw:ar